

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: Methyl Tertiary Butyl Ether (“MTBE”) : Master File No. 1:00-1898
Products Liability Litigation : MDL No. 1358 (SAS)
: M21-88

This Document Relates To: : The Honorable Shira A. Scheindlin
Orange County Water District v. Unocal :
Corporation, et al., Case No. 04 Civ. 4968 :
(SAS). :
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**FURTHER SUPPLEMENTAL DECLARATION OF JAMES J. FINSTEN IN SUPPORT
OF DEFENDANTS’ FURTHER SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT MOTION BASED ON THE STATUTE OF LIMITATIONS**

FURTHER SUPPLEMENTAL DECLARATION OF JAMES J. FINSTEN

I, James J. Finsten hereby declare:

1. I am a member of the bar of the State of California and an attorney at the law firm of Arnold & Porter LLP, counsel for defendants Atlantic Richfield Company, BP Products North America Inc. and BP West Coast Products LLC (collectively “BP”). I make this declaration in support of Defendants’ Motion for Summary Judgment Based On The Statute of Limitations (“Finsten 2009 Supp. Decl.”). This declaration is based on my personal knowledge and, if called as a witness, I could testify competently thereto. I previously submitted a declaration in support of defendants’ motion for summary judgment based on the statute of limitations in February 2007 and May 2008, respectively: Declaration of James J. Finsten In Support Of Defendants’ Motion For Summary Judgment Based On The Statute Of Limitations, February 15, 2007 (“Finsten 2007 Decl.”) and Supplemental Declaration of James J. Finsten In Support Of Defendants’ Second Supplemental Brief In Support Of Motion For Summary Judgment Based On The Statute Of Limitations, May 9, 2008 (“Finsten 2008 Supp. Decl.”).

2. I supervised the preparation of the concurrently filed Defendants’ Local Rule 56.1 Statement In Support of Further Supplemental Brief on Statute of Limitations (“Defs.’ 2009 L.R. 56.1 Statement”), and have reviewed the documents cited therein. Mindful of the Court’s Individual Rule III.H. requirements relating to the number of affidavits and exhibits accompanying a summary judgment memorandum, certain documents from defendants’ station remediation files which are cited in Defs.’ 2009 L.R. 56.1 Statement by referring to their Bates ranges are not included as exhibits hereto. All such documents were either produced by or to the District in this litigation or, in a few identified cases are publically available, and the information from these voluminous records is correctly and accurately summarized in Defs.’ 2009 L.R. 56.1

Statement. Should the Court so wish, defendants will submit these documents in a further appendix to the present briefing.

3. Attached hereto as Exhibit 1 is a true and correct copy of California State Water Resources Control Board Resolution No. 92-49 (As Amended Apr. 21, 1994 and Oct. 2, 1996), Polices and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304. This document is publicly available at the State Water Resources Control Board website at: <http://www.swrcb.ca.gov/resdec/resltn/other/rs92-49.html> (last visited May 1, 2009).

4. Attached hereto as Exhibit 2 is a true and correct copy of a letter from Michael Axline to Matthew Heartney, served on March 13, 2009.

5. Attached hereto as Exhibit 3 is a true and correct copy of a letter from Michael Axline to Jon Anderson, served on February 17, 2009.

6. Attached hereto as Exhibit 4 is a true and correct copy of Plaintiff's Pre-Conference Reply Letter to the Court, served on February 23, 2009.

7. Attached hereto as Exhibit 5 is a true and correct copy of a letter from Michael Axline to the Court, served on February 6, 2009.

8. Attached hereto as Exhibit 6 is a true and correct copy of a letter from Tracey O'Reilly to Jon Anderson, served on February 20, 2009.

9. Attached hereto as Exhibit 7 is a spreadsheet, prepared under my supervision and direction, containing historical MTBE testing data extracted from the District's Water Resource Management System ("WRMS") database for City of Anaheim production well A-29. The underlying data which were used to compile Exhibit 7 were produced by the District on April 16, 2008.

10. Attached hereto as Exhibit 8 is a true and correct copy of relevant portions of a document entitled, "Orange County Water District - Organic Laboratory - MTBE Hits" dated May 7, 1999, produced by the District in this litigation at OCWD-MTBE-001-033798-813.

11. Attached hereto as Exhibit 9 is a true and correct copy of a letter from Michael Axline to the Court, served on December 16, 2005.

12. Attached hereto as Exhibit 10 are true and correct copies of pages 254-260, 373-378, 392, 491, 683, 693, 878, 936-937, 949-950, 964-966, 983-985, 997-998, 1181, 1271-1273, 1508, 2093-2095, 2098, 2111-2112, 3058-3059, 3071-3073, and 3804 of the reporter's official transcript of the Federal Rule of Civil Procedure 30(b)(6) deposition of the District's designated witness David Bolin, which was taken in this matter on July 30, 2008, July 31, 2008, August 19, 2008, August 20, 2008, August, 21, 2008, October 20, 2008, October 21, 2008, October 29, 2008, October 30, 2008, November 6, 2008, and November 21, 2008. These deposition excerpts refer or relate to testimony regarding various stations and wells in the focus plumes in this case. Also attached as part of Exhibit 10 to this Declaration are true and correct copies of Exhibits 14, 18, 49 and 96 to the Bolin Deposition.

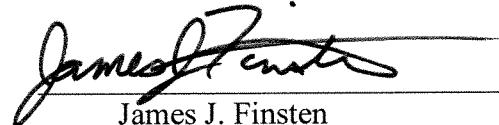
13. Attached hereto as Exhibit 11 are true and correct copies of pages 3971-3972 of the reporter's official transcript of the Federal Rule of Civil Procedure 30(b)(6) deposition of the District's designated witness, hydrogeologist Roy Herndon, which was taken in this matter on December 1, 2008. These deposition excerpts refer or relate to testimony regarding various stations and wells in the focus plumes in this case.

14. Attached hereto as Exhibit 12 are true and correct copies of pages 48-49, 54-55, 59-60, 62-63, and 65 of the reporter's rough transcript of the Federal Rule of Civil Procedure 30(b)(6) deposition of the District's designated witness, laboratory director Steve Fitzsimmons,

which was taken in this matter on April 17, 2009. These deposition excerpts refer or relate to testimony regarding various stations and wells in the focus plumes in this case. Also attached as part of Exhibit 12 to this Declaration is a true and correct copy Exhibit 20 to the Fitzsimmons Deposition.

15. Attached hereto as Exhibit 13 is a true and correct copy of Plaintiff Orange County Water District's Second Supplemental Responses to Defendants' Preliminary Interrogatories re Standing, served on May 2, 2008.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on May 4, 2009 at Los Angeles, California.



James J. Finsten